IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1892 OF 2006
IN
WRIT PETITION NO. 5349 OF 2005

Shri Firoz Madadlli Patel] .. Applicant

Versus

1. Sub Divisional Officer, Karad Sub Division, Karad & Anr.] .. Respondents

Mr. S.A. Kumbhakoni for the applicant.

Mr. C.R. Sonawane, AGP, for the respondents No.1 & 2.

CORAM: R.M. LODHA &
NARESH H. PATIL, JJ.

DATED: 14TH AUGUST, 2006

P.C. :

. Heard.

2. This Civil Application has been made for setting aside the order dated 23rd June, 2006 and for restoration of Writ Petition to file. The application for restoration has been made as if the Writ Petition was dismissed in default. This is what is stated in paragraph 4 of the Civil Application:

> "It is submitted that in such circumstances, unfortunately, the matter came to be dismissed for default."

3. However, the order dated June 23, 2006 reads thus:

> "Mr. Mahatgude is present for the petitioner. He seeks time. He had sought time on the last date also and on his request, the matter had been adjourned. Since he is not proceeding with the matter, we have no option but to dismiss it.
>
> . Petition dismissed for non-prosecution. Mrs. Thakur, AGP, is present for the respondents."

4. It would be seen that the Advocate for the petitioner was present on June 23, 2006. He sought time which was declined by the Court as the matter had been earlier adjourned at his request. It appears from the order that the Court wanted him to proceed with the matter which he did not do leaving no option for the Court, but to dismiss the Writ Petition. The impugned order does not show that Writ Petition has been dismissed in default.

5. The adjournment is not the right of the petitioner. The Writ Petition was filed on 8th August, 2005. It appears from the proceedings that on 29th August, 2005 the learned Single Judge issued notice before admission to the respondents. Then it transpired

that the subject matter of the Writ Petition pertains to the jurisdiction of Division Bench and the matter was ordered to be posted before the Division Bench. On 6th March, 2006 the Assistant Government Pleader sought time to file reply Affidavit which was filed in the month of April, 2006. The matter appeared before the Court on 16th June, 2006 and at the request of the Advocate for the petitioner, it was adjourned to 22nd June, 2006.

6. Then, on 23rd June, 2006 when the case was called out the Advocate for the petitioner sought time which was declined and he was asked to proceed with the matter, but he did not do so.

7. In the circumstances in which the Writ Petition was dismissed for non-prosecution, we find no justification for recalling the order.

8. Civil Application is dismissed.

Sd/-
[R.M. LODHA, J.]

Sd/-
[NARESH H. PATIL, J.]